



Protecting and Restoring the Santa Barbara Channel and Its Watersheds

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Re: Violations occurring from development project at 1000 Via Tranquila, Santa Barbara, CA 93110

To Whom It May Concern:

Santa Barbara Channelkeeper is writing to express our grave concern about the apparent violation of several local, regional, state and federal laws and regulations designed to protect creeks and water quality by a development project that has taken place at 1000 Via Tranquila in Santa Barbara, California. Santa Barbara Channelkeeper is a non-profit organization dedicated to protecting and restoring the Santa Barbara Channel and its watersheds through citizen action, education, field work and enforcement. By bringing this problem to your attention, Channelkeeper seeks to secure a commitment from your agencies to work together to take any and all appropriate actions to ameliorate the environmental problems caused by this project, and to undertake a formal process to ensure that your staff are properly trained and your agencies better communicate and cooperate in the future to ensure that all relevant environmental laws and regulations are properly implemented and enforced in order to prevent this type of problem from recurring.

The owner of the property at 1000 Via Tranquila in Santa Barbara has undertaken numerous unpermitted and illegal activities, including the unpermitted removal of extensive riparian vegetation (sycamores, willows, oaks and thick brush) from the creek bank on the edge of the

property in question ("near bank"), the creek bed and the far bank (owned by another property owner); the grading, filling and substantial alteration of the creek bank and bed; the placement of loose rocks in the creek bed; and the construction of a structure six and a half feet from the edge of the creek bank. These activities have caused undue damage to riparian habitat and resulted in substantial erosion and sedimentation into a waterway. The owner of the property failed to contact relevant agencies to obtain the necessary permits and conditions of approval prior to the commencement of this work despite numerous legal requirements to do so. This failure can only be attributed to a lack of due diligence, adequate training, oversight and enforcement by the Hope Ranch Park Homes Association and Santa Barbara County's Planning and Development Department ("P&D") and subsequently, by other relevant agencies.

The property owner in question had applied for land use, grading and building permits to undertake the construction of a house, pool and two garden structures at said property in February 2005. The complete removal of all vegetation on both creek banks and within the creek bed itself occurred in May 2005, prior to P&D's July 22, 2005 approval of the land use permit, which authorized no work in the creek bed nor on the banks. A grading permit authorizing 2,500 cubic yards of cut and 2,500 cubic yards of fill and a 2,300 square foot retaining wall on the upper portion of the property was issued by P&D on July 27, 2005, again with no authorization for any work to be conducted on the banks or in the bed of the creek.

After contacting the Hope Ranch Park Homes Association and consistent with the recommendation of the Environmental Defense Center, neighbors concerned about the denuding of the creek banks contacted CDFG in July 2005, P&D in August 2005. Mr. Tony Bohnett, the onsite P&D Grading Inspector, claimed at that time that he had only approved work to the top of the bank. Indeed, if County officials had appropriately inspected the site or investigated the complaint, they would not have legally been able to allow the project to occur absent CEQA review, per the Santa Barbara County Environmental Thresholds and Guidelines Manual, which states that a significant water quality impact is presumed to occur if the project results in removal or reduction of riparian vegetation or other vegetation from the buffer zone of any streams, creeks or wetlands.

Ms. Natasha Lohmus, Environmental Scientist with the California Department of Fish and Game ("CDFG"), came out to inspect the property on August 15, 2005, and determined that the property owner's removal of vegetation from the creek constituted a violation of the Fish and Game Code. CDFG subsequently required the property owner to file for a Streambed Alteration Agreement, which was finalized and signed in March 2006.¹ A building permit for the construction of two garden structures and a grading permit for "revised grading at lower garden area and footpath area" were both issued by P&D on November 3, 2005.

During the winter of 2005-06, the property owner did nothing to prevent erosion from the denuded creek banks, which resulted in substantial erosion and discharge of sediment into the creek.

Then, during the spring and summer of 2006, the property owner excavated both the near and far banks of the creek, and then conducted extensive grading, fill and compaction. These activities raised the height of the near bank by several feet, and extended the toe by at least ten feet such that it nearly touched the far bank and completely buried the low flow channel under the newly advanced bank in the creek bed. Both the Regional Water Quality Control Board ("RWQCB")

¹ Streambed Alteration Agreement 1600-2005-0736-R5.

and the US Army Corps of Engineers ("ACOE") confirmed that this had transpired. A garden shed was erected six and a half feet from the edge of the heightened near bank. Small loose rocks were placed in a new, man-made channel in what was left of the creek bed, and unstable rip-rap was placed on the banks in three separate areas. Photographic evidence also documents that the operator failed to implement construction Best Management Practices, thus allowing wastewater from the construction activities to be discharged into the creek. Again, none of this work was authorized by the SAA nor the County permits issued; in fact, these activities represent direct violations of the SAA, County permits, and numerous other county, state and federal laws and regulations (outlined in detail below).

Again in the winter of 2006-07, despite minimal rainfall, substantial erosion and sedimentation was caused as a result of these activities. Mud, silt, debris and the rocks recently placed in the bed and on the banks were discharged into the creek, blocking flow into the culvert that leads to Las Palmas Creek and the Pacific Ocean. Inadequate placement of jute and subsequently mulch with a few small plants by the property owner did not stop these adverse impacts.

Despite these violations, P&D and other relevant agencies have failed to take action to address these issues or even to acknowledge that any violations of county, state or federal laws have occurred.

The purpose of Santa Barbara County's Grading Ordinance is to avoid pollution of watercourses with sediments or other pollutants generated on or caused by surface runoff on or across construction sites. The Ordinance prohibits grading, excavation or fill without first obtaining grading and land use permits for such work, and states that grading permits shall constitute authorization to do only that work described or illustrated on the grading plans and erosion and sediment control plans and shall not relieve the owner from responsibility for securing other permits required by other County, State or Federal ordinances, departments or divisions. It further requires that drainage, erosion and sediment plans be submitted, approved and implemented prior to conducting any grading.²

P&D has claimed that what occurred was a "surface operation of clearing and grubbing to effect a County-approved planting plan."³ P&D mistakenly classified what any layperson's inspection reveals is a creek as a "drainage way" because it did not appear as a blue line stream on USGS topographical maps, thereby leading P&D to improperly assert that the Grading Ordinance provisions did not apply to this situation. The definition of watercourse in the Grading Ordinance is as follows: "A creek or stream designated by a blue line on the largest scale of the latest edition of the USGS Map or a creek or stream which supports fish at any time of the year, or *has significant water flow thirty days after the latest significant storm*"⁴ (emphasis added). This error was admitted by at least one other County employee, Mr. Mark Walter, who, in an email dated November 29, 2006, noted that the term "blue line stream" is "an irrelevant term and really has no legal meaning outside of the Coastal Act. ... The County does have policies that protect basically all watercourses, inland and coastal, regardless of whether they're shown on a USGS map as a blue line or not."⁵ Although we cannot speak to the livelihood of local fish in the

² Santa Barbara County Code, Chapter 14, Sec. 14-11.

³ Letter from John Baker, Director of Planning and Development, to Roger and Barbara Kohn, March 16, 2007.

⁴ Santa Barbara County Code, Chapter 14, Sec. 14-2.

⁵ Email from Mark Walter, County Planner, to Mauricio Gomez, Director of the Santa Barbara County Watershed Restoration Program, November 29, 2006.

waterway, neighbors and other witnesses claim, photographic evidence documents, and the presence of riparian vegetation upstream and downstream of the project site clearly indicates that water has indeed flowed for thirty days after numerous significant storms in the past. Unfortunately, the County failed to implement these legally required protective policies in this instance, and we suspect this is not an isolated incident.

As asserted in an e-mail dated March 1, 2007 from Ms. Heather Wylie, Project Manager in the Ventura Field Office of the ACOE's Regulatory Division, "When the County issues permit[s] for work in a creek regardless of whether or not it is a blue line stream, CDFG, the Corps, and RWQCB should be contacted prior to ... authorization."⁶

Moreover, the CDFG Field Guide for SAAs notes that whenever fill is to be placed in a stream, the project proponent should be advised to contact the ACOE's Regulatory Branch for a jurisdictional determination.⁷

Pursuant to the California Fish and Game Code, a proponent of a project that includes any alteration of the bed, banks or channel of a stream or the adjacent riparian vegetation must notify the CDFG prior to undertaking such activity. CDFG then determines whether the project will substantially obstruct or divert the natural flow of a river, stream or lake; use any material from these areas; or dispose of waste where it can move into these areas. If the proposed project meets these thresholds, a Streambed Alteration Agreement ("SAA") is required.⁸

Under Section 401 of the Clean Water Act ("CWA"), the RWQCB must be notified prior to the commencement of any activity which could cause a discharge of dredged or fill material into a water body. After notification, the RWQCB then either certifies that the proposed activity will comply with State water quality standards or applies conditions to mitigate potential impacts to beneficial uses and other water quality standards.⁹

In addition, projects that involve the removal or placement of soil, sediment, and other materials in or near water bodies require a permit from the ACOE under Section 404 of the CWA.¹⁰ The ACOE's jurisdictional determination was delayed pending the US Supreme Court's decision on the *Rapanos v. United States* case regarding ACOE's jurisdiction over waters of the United States. Given the recent decision on this case, the ACOE will soon be determining its role in this matter. Given that the stream in question has a significant nexus to the nearby Pacific Ocean, it is our assessment that an affirmative jurisdictional determination should result. This would place the subject creek under the regulation of Section 404 of the CWA.

Incredibly, P&D inspectors also incorrectly measured the amount of soil disturbance on the site as less than one acre, thereby leading them to the incorrect determination that the property owner was not required to notify the RWQCB to obtain a Section 401 Water Quality Certification and coverage under the State's General Permit for Storm Water Discharges Associated with Construction Activity ("General Construction Permit"). This permit requires entities undertaking

⁶ Email from Heather Wylie, Project Manager, ACOE Regulatory Branch, Ventura Field Office, to Barbara and Roger Kohn, March 1, 2007.

⁷ California Department of Fish and Game, *A Field Guide to Lake and Streambed Alteration Agreements Sections 1600-1607, California Fish and Game Code*, 1994.

⁸ California Fish and Game Code Section 1600-1616.

⁹ 33 U.S. Code § 1341.

¹⁰ 33 U.S. Code § 1344.

construction activity that will disturb one acre or more to develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") which specifies Best Management Practices ("BMPs") that will prevent all construction pollutants from coming into contact with storm water and will keep all products of erosion from moving off site into receiving waters; eliminate or reduce non-storm water discharges to storm sewer systems and other waters of the US; and perform inspections of all BMPs.¹¹

After the CDFG, RWQCB and ACOE became apprised of the activities that were undertaken at the project site, they have expressed their view that P&D improperly allowed these activities to occur. The following paragraphs outline these agencies' involvement and opinions on this case.

As noted above, CDFG was notified by concerned neighbors about the extensive removal of riparian vegetation that occurred in May 2005 and subsequently required the owners of 1000 Via Tranquila to obtain a Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code.¹² The requirement to obtain an Agreement, and the Agreement's labeling of the waterway on the Via Tranquila property as an "unnamed creek, tributary to Las Palmas Creek"¹³ present clear evidence that the State considers this waterway to be a stream or creek and thus subject to all relevant laws preventing the type of environmentally destructive activities that had already occurred.

Unfortunately, since the signing of the SAA in March 2006, substantial construction occurred within the bed and on the banks of the creek in direct violation of the SAA. CDFG has recognized, in a letter dated June 26, 2007, that alterations occurred after the SAA had been signed and other failures to comply with the SAA have resulted due to "apparent errors by the property owner," yet the CDFG has elected to take no enforcement action.¹⁴

Mr. David Innis, the Construction and Industrial Stormwater Program Officer at the RWQCB, was prompted to investigate this project in February 2006, and found that the property owner had failed to file for coverage under the General Construction Permit. In an email dated February 22, 2007, Mr. Innis noted that permit coverage is a "US EPA and State requirement for all construction equal to or exceeding 1 acre of disturbed soil. It looks like he has disturbed more than an acre, so I will need to find out why Santa Barbara County allowed this construction without informing the Water Board."¹⁵ Mr. Innis was correct; P&D did allow more than an acre of soil disturbance to occur without requiring or even informing the owners of their legal requirement to obtain coverage under the General Construction Permit and prepare and implement a SWPPP prior to commencing the work.

Once Mr. Innis discovered this error, he contacted the property owner to notify him of the requirement to obtain coverage under the General Construction Permit. However, we note that these steps were unfortunately initiated long after the commencement of the project and after substantial damage had already been inflicted on the creek. The RWQCB has subsequently

¹¹ NPDES General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08-DWQ.

¹² Streambed Alteration Agreement 1600-2005-0736-R5.

¹³ Id.

¹⁴ Letter from Kevin Hunting, Acting Regional Manager, California Department of Fish and Game, to Roger and Barbara Kohn, June 26, 2007.

¹⁵ Email from David Innis, Environmental Scientist, Construction, Industrial Stormwater, Central Coast RWQCB, to Barbara Kohn, February 22, 2007.

issued a notice to the property owner of his failure to comply with the SAA, the inadequacy of the SWPPP that was finally submitted, and his failure to install appropriate erosion and sediment control measures.¹⁶ It is of grave concern to Channelkeeper that County inspectors and planners failed to recognize that this project would involve more than an acre of disturbance, a relatively simple yet extremely important measurement, particularly in light of the fact that County inspectors personally inspected the property several times.

The ACOE has also voiced its concern about this project. Ms. Heather Wylie, Project Manager at the Regulatory Branch of the ACOE's Ventura Field Office, wrote in an email dated March 1, 2007:

Did [1000 Via Tranquila] have county permits to do the work he did? Considering the following setback ordinance <http://www.counties.org/pwd/water/downloads/setback.pdf>; I doubt he would get permission to fill in the creek from the County and put a structure a few feet from the top of a bank. I am sure you know this but just in case: when the county issues permit for a creek regardless of [whether] or not it is a blue line stream CDFG, the Corps and RWQCB should be contracted prior to your authorization. This is now a violation case with CDFG and it may become one with us too. Let me know if you would like me to come in and do a presentation for your planners on what exactly it is we regulate, many people I have talked to at the County have the misconception we only regulate blue line creeks, this is not the case.¹⁷

Despite the assertion by these agencies that the County failed to properly recognize the watercourse behind 1000 Via Tranquila as a creek and thus failed to inform the property owner of his legal obligations to notify the CDFG to obtain a Streambed Alteration Agreement, the RWQCB to obtain coverage under the General Construction Permit and certification of the project under Section 401 of the CWA, and the ACOE to obtain a CWA Section 404 permit, County officials continue to insist to this day that the waterway is a drainage way and thus not subject to the protection afforded to creeks in the County and under the aforementioned laws and permits.

This situation is a clear demonstration of two major problems that Channelkeeper finds to be unfortunately endemic among our regulatory agencies – inadequate training, and insufficient oversight and enforcement. Despite the fact that regional, state and federal agencies have intervened and determined that the waterway in question is indeed a creek and that the construction project involved more than one acre of soil disturbance adjacent to environmentally sensitive habitat, P&D persists in misclassifying the creek as a "drainage way" and thus refuses to enforce the relevant County Code regulations that would have prevented the environmental damage that has occurred. It is unclear whether these errors by P&D were caused by negligence on the part of the inspectors and planners, intentional disregard for the relevant rules, inaccurate methods of assessing waterways and construction activities, a lack of uniformity in the classification of waterways, or some combination of these factors. Regardless, these actions are of concern to Channelkeeper not only because of their damaging effect to the waterways we work to protect, but also because they are evidence of inadequate training of P&D staff and a lack of enforcement of creek protection laws. The County is the first agency citizens look to for guidance when undertaking development projects within its jurisdiction and County officials

¹⁶ Letter from Roger Briggs, Executive Officer, RWQCB, to Clay and Mary Lou Running, August 20, 2007.

¹⁷ Email from Heather Wylie, Project Manager, ACOE Regulatory Branch, Ventura Field Office, to Barbara and Roger Kohn, March 1, 2007.

need to be properly trained to recognize the valuable and ecologically sensitive habitats in its jurisdiction and to advise project proponents of their legal requirements and the relevant authorities of CDFG, RWQCB and ACOE. It is imperative that the County recognize and immediately address these serious problems before other environmentally destructive projects are rubber-stamped by P&D absent the appropriate level of project conditioning and oversight. The same also applies to the Hope Ranch Park Homes Association.

The second issue that concerns us is the lack of oversight and enforcement of the few permits that were issued for this project. For example, although the CDFG appropriately requested that the property owner obtain a SAA after being made aware of the defoliation of the creek banks and bed, there has been inadequate oversight by CDFG since the SAA was signed and no action has been taken to address the gross violations of the SAA that have subsequently occurred, including significant unpermitted fill and grading in and alteration of the creek bed.

In this case and many others like it, the laws enacted to protect our waterways are not being implemented and enforced, and thus water quality and riparian habitats are not being adequately protected. Now that all agencies are in accord that this waterway is in fact a creek subject to the California Fish and Game Code, the General Construction Permit, and Sections 401 and 404 of the Clean Water Act, we call on the County and all other relevant agencies to systematically review this case, understand how these violations were allowed to occur, take action to ensure that all necessary mitigation and restoration are immediately completed at the project site to prevent additional environmental harm, and implement a more comprehensive program that better coordinates and fulfills your agencies' mandates to protect our waterways from this type of destructive activity. Santa Barbara Channelkeeper looks forward to your response.

Respectfully,

Kira Redmond
Executive Director

Cc: Natasha Lohmus, Streambed Alteration Team, California Department of Fish and Game
Heather Wylie, Regulatory Branch, US Army Corps of Engineers, Ventura Field Office
David Innis, Central Coast Regional Water Quality Control Board
Jim Trebbin, Ranch Manager, Hope Ranch Park Homes Association
Colleen Cooney, Building Administrator, Hope Ranch Park Homes Association